



PLANNING COMMISSION STAFF REPORT

File No.	CP15-050 and ABC15-015
Applicant:	AMS Associates, Inc.
Location	720 West San Carlos
Existing Zoning	CIC Combined Industrial/Commercial
Historic Resource	No
Annexation Date:	March 16, 1911
CEQA:	Exempt

APPLICATION SUMMARY:

Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol of a full range of alcoholic beverages at a 31,352-square foot full-service grocery store (Smart & Final) on a 2.78 gross acre site.

RECOMMENDATION:

Staff recommends that the Planning Commission make a recommendation of **approval** to the City Council for the Conditional Use Permit and Determination of Public Convenience or Necessity based upon the facts and findings in this staff report and the attached draft Resolution.

PROJECT DATA

GENERAL PLAN CONSISTENCY			
General Plan Designation		Combined Industrial/Commercial <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent	
Consistent Policies		VN-3.1	
Inconsistent Policies		None	
SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
North	Combined Industrial/Commercial	Light Industrial	Industrial uses, car wash
South	Combined Industrial/Commercial	Light Industrial	Industrial commercial uses, residences
East	Combined Industrial/Commercial	Light Industrial	Railroad tracks, Los Gatos Creek Trail, multifamily residential
West	Combined Industrial/Commercial	Light Industrial, Commercial General	Industrial commercial uses

PROJECT DESCRIPTION AND SITE LOCATION

On September 3, 2015, the applicant applied for a Conditional Use Permit (CUP) and Determination of Public Convenience or Necessity to allow the off-sale of alcohol of a full range of alcoholic beverages at a 31,352-square foot full service grocery store (Smart & Final) on a 2.78 gross acre site in the CIC Combined Industrial/Commercial Zoning District.

The proposed project will be located in an existing 31,352-square foot building. There is currently a separate Site Development Permit (File No. H15-049) on file to allow minor modifications including new façade, construction of rear loading dock, removal of existing parking lot and installation of pavers, new landscaping and other improvements on the site. Smart & Final, a full service grocery store, plans to occupy the building.

The off-sale of alcohol would consist of an approximately 350-square foot portion of the store (approximately 1.1% of the total gross floor area), as shown in Figure 1.

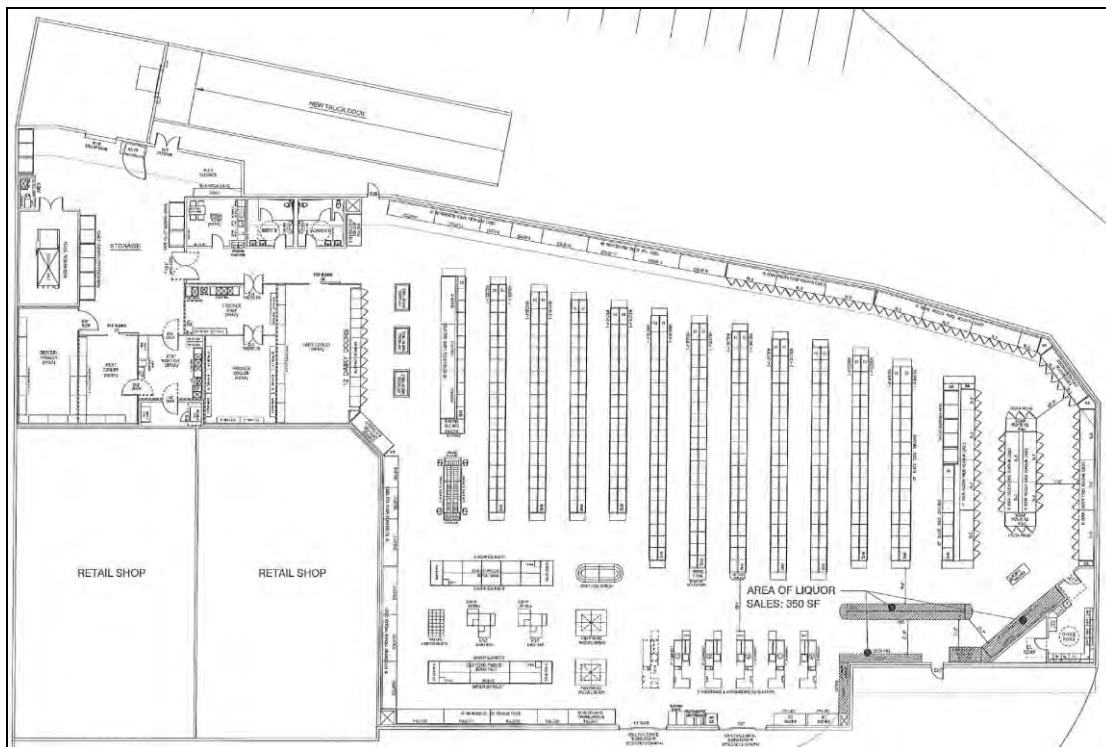


Figure 1: Proposed Floor Plan



Figure 2: Aerial View

The grocery store would occupy the former OSH tenant space and is part of a larger 73,859-square foot shopping center. There are commercial, industrial, and residential uses to the north, south, and east. The closest residential unit is approximately 285 feet from the proposed use. Railroad tracks, Los Gatos Creek Trail, and residences are to the west, as shown in Figure 2.

ANALYSIS

The proposed CUP was analyzed with respect to conformance with: 1) the Envision 2040 General Plan; 2) the Zoning Ordinance; 3) Requirements for a Determination of Public Convenience or Necessity; and 4) California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

The proposed project site has an Envision San Jose 2040 General Plan Land Use/Transportation Diagram designation of Combined Industrial/Commercial. This category allows a significant amount of flexibility for the development of a varied mixture of compatible commercial and industrial uses, including hospitals and private community gathering facilities. Properties with this designation are intended for commercial, office, or industrial developments or a compatible mix of these uses.

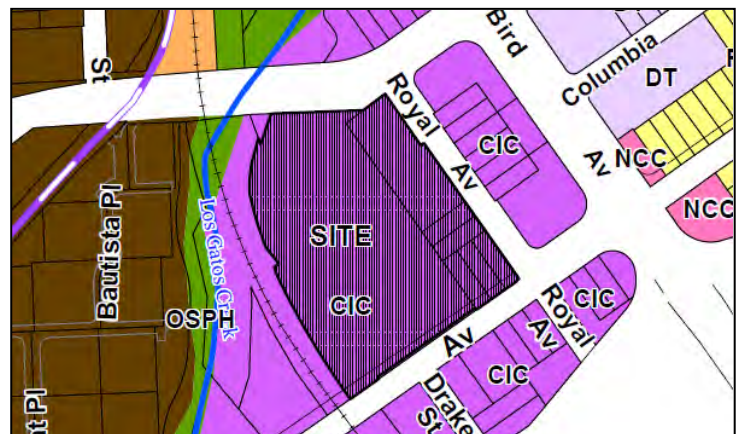


Figure 3: General Plan Map

The proposed Conditional Use Permit would allow a use that will enhance the community, and is consistent with the following General Plan policies:

- Vibrant Neighborhoods Policy VN-3.1: Encourage the location of full service grocery stores within or adjacent to neighborhoods with limited access to healthful foods with the goal that all San José residents be able to live within a ½ mile walking distance of a full service grocery store.

Analysis: The proposed grocery store with alcohol sales will provide a full service grocery store to a generally underserved neighborhood. The closest existing grocery store is approximately a half mile away and does not serve the neighborhood directly adjacent to the subject site in terms of walking distance.

Zoning Ordinance Conformance

Land Use

As stated above, the proposed project is located in the CIC Combined Industrial/Commercial Zoning District, which requires a CUP for the off-sale of alcoholic beverages per Section 20.50.100 of the Zoning Ordinance.

Conditional Use Permit

While retail sales of food, beverage, groceries is a permitted use in the CIC Combined Industrial/Commercial Zoning District, the off-sale of alcohol in conjunction with a grocery store is a conditional use. In order to make the CUP findings and recommend approval to the Planning Commission, staff must determine that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and

Analysis: As indicated in the attached Police Department Memorandum, the proposed use is not located within an area of high crime, but the area does exceed the ratio of off-sale retail licenses to population in the county. However, the Police Department is neutral to the issuance of the CUP. The hours of the retail establishment would be between 6:00 a.m. to midnight, which is allowed by right.

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: The proposed project will occupy an existing building, and only includes minor exterior façade modifications and internal tenant improvements to facilitate the proposed use through a separate Site Development Permit (File No. H15-049).

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and

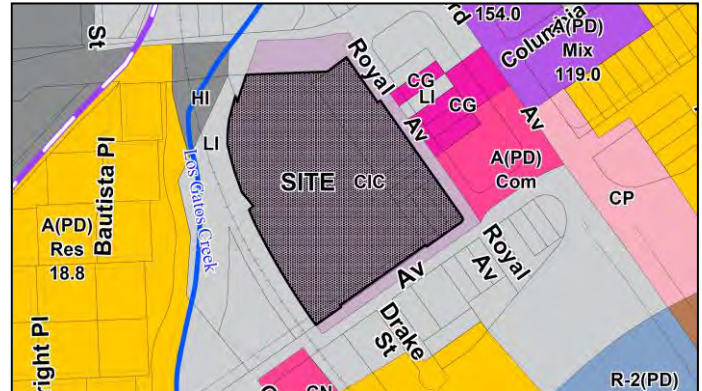


Figure 4: Zoning Map

- b. By other public or private service facilities as are required.

Analysis: The subject site is adequately served by the adjacent public streets and is directly accessed from West San Carlos Street and Royal Avenue.

Required Findings for Off-Sale of Alcohol

A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three findings, if applicable, to the off-sale of alcoholic beverages:

1. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand 1,000 foot radius from the proposed location.

Analysis: There is one other use involving the off-sale of alcoholic beverages within a 500 foot radius of the proposed site. There are no other uses within a 1,000 foot radius of the site, and this site will only be the second off-sale of alcoholic beverages location within 1,000 feet. Therefore, this finding can be made.



Figure 5: Nearby Alcohol Sales

2. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000 foot radius from the proposed location, that the resulting excess concentration of such uses will not:

- a. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the area; or
- c. Be detrimental to public health, safety or general welfare.

*Analysis: As stated above, the proposed use will not result in more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000 foot radius of the proposed location. Therefore, this finding is **not applicable**.*

3. For such a use at a location closer than 500 feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than 150 feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

*Analysis: The proposed site is not located closer than 500 feet from any child care center, social service agency, residential care facility, residential service facility, elementary school, secondary school, or college or university. The project site is not within 150 feet from any residentially zoned property. Therefore, this finding **can** be made.*

Requirements for Determination of Public Convenience or Necessity

Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny an application for a liquor license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area,” unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity). An “undue concentration” is defined as follows:

1. The premises of the proposed license are located in an area that has 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole, or
2. The premises of the proposed license are located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

The project site is located within a census tract where the ratio of existing retail off-sale license to population in the census tract exceeds the ratio in the County as a whole. Therefore, for the ABC Department to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity. The analysis of the proposal is based on the required findings identified in Title 6 of the San José Municipal Code.

Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that the Planning Commission may issue a PCN only after first making the specified factual findings identified below:

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the Chief of Police has determined that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.

Analysis: The proposed use is within the Burbank/Del Monte Strong Neighborhoods Initiative (SNI) area. However, the Police Department is neutral to the issuance of the Conditional Use Permit, as the reported crime statistics are not over the 20 percent crime index. In addition, the proposal would provide a full-service grocery store to an underserved area where there is no other grocery store within a half mile. The Planning Commission cannot make this finding.

2. The proposed use would not lead to the grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use.

Analysis: There is only one other off-sale use within a 1,000 foot radius of the site, and this site will only be the second off-sale of alcoholic beverages location within 1,000 feet. Therefore, this finding can be made.

3. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within 150 feet of a residence.

Analysis: The proposed use is not located within 500 feet of a school, day care center, social services agency, or residential care or service facility. The site is also not within 150 feet of a residence. Therefore, this finding can be made.

4. Alcohol sales would not represent a majority of the proposed use.

Analysis: Approximately 1.1% percent of the total floor area is proposed to be used for the sale of alcohol for off-site consumption. Accordingly, the off-sale use represents an ancillary and incidental component to the primary grocery store use and does not represent a majority of the overall use. Therefore, this finding can be made.

5. At least one of the following additional findings must be made, if the Planning Commission is able to make all of the four findings enumerated above. The Planning Commission must be able to find that:

- a. The census tract in which the proposed outlet for the off-sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant impact on public health or safety; or
- b. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety; or
- c. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-sale of alcoholic beverages in the area; or
- d. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

If however, the Planning Commission cannot make one or more of the first four findings listed above, then the Planning Commission shall make a recommendation to the City Council as to whether the Council should make a determination for the proposed use.

Analysis: Given the above-stated analysis, the first finding for the PCN cannot be made by the Planning Commission for the proposed off-sale of alcohol because the project site is within a SNI; however, the Commission can make three of the four findings. Moreover, the Commission can make findings 5.b and 5.d of the additional findings for a PCN determination. The majority of the site will be used as a grocery store, and the sale of alcohol is incidental to the overall use of the site.

Therefore, City Council approval is required for the proposed use. As such, the City Council may issue a determination in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages where it can make a determination that not all of the required findings set forth above can be made, and when the Council identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use. The Council can identify and find that significant and overriding public benefit will be provided by the proposed use.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Under the provisions of Section 15301(a) of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended (CEQA). The Section 15301(a) (Existing Facilities) exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Examples include but are not limited to: a) interior or exterior alteration involving such things as interior partitions, plumbing, and electrical conveyance. The proposal qualifies for this exemption as the proposed off-sale of alcohol, is located in an existing structure. The proposed use is not an expansion of the building.

PUBLIC HEARING NOTIFICATION

In order to inform the public of the proposed project, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Project Manager: Rebecca Bustos

Approved by:

, Planning Official for Harry Freitas, Planning Director

Date:

1/19/16



Attachments:

Police Department Memorandum
Draft Resolution
Reduced Plan Set

Owner:

National Retail Properties
450 South Orange Avenue, Suite 900
Orlando, Florida 32801

Applicant:

AMS Associates, Inc.
801 Ygnacio Valley Road, Suite 220
Walnut Creek, California 94596



Memorandum

TO: Avril Baty
Planning Department

FROM: Ofc. Mike Epp #3048
San Jose Police Vice Unit

SUBJECT: Smart & Final Food Market CP15-050

DATE: September 2, 2015

Approved

Date

I have received your request for input regarding Smart & Final Food Market, located at 720 W San Carlos St San Jose, Ca. 95126. Smart & Final Food Market is seeking a Conditional Use Permit for off-sale of alcohol at a grocery store.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is in the Burbank/Del Monte Strong Neighborhood Initiative area.

720 W San Carlos St is located in San Jose Police Beat F5. The reported crime statistics as defined by B&P Section 23958.4(c) **are not** over the 20% crime index thus the location **is not** considered unduly concentrated per B&P Section 23958.4 (a)(1).

Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
F5 (2014)	413	159	572	No
City Average	324	166	490	

Department of Alcohol Beverage Control (ABC) records indicate that 720 W San Carlos St is in census tract 5008.00. Pursuant to B&P Section 23958.4 (a)(2), the ratio of off-sale retail licenses population in census tract 5008.00 **does** exceed the ratio of off-sale retail licenses retail licenses to population in the county in which the applicant premises are located.

Authorized and Current ABC Licenses in Census Tract 5008.00

Census Tract	Authorized ABC Licenses as of September 2015		Current ABC Licenses as of September 2015		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off – Sale	On - Sale	Off – Sale
5008.00	3	1	79	3	Yes	Yes

The San Jose Police Department is **neutral** to the issuance of this Conditional Use Permit for off-sale of alcohol at this grocery store.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Mike Epp #3048
Administrative Officer
Special Investigations/Vice

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT AND GRANTING A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOL OF A FULL RANGE OF ALCOHOLIC BEVERAGES AT A 31,352-SQUARE FOOT FULL-SERVICE GROCERY STORE (SMART & FINAL) ON A 2.78-GROSS ACRE SITE, LOCATED AT THE SOUTHWEST CORNER OF WEST SAN CARLOS STREET AND ROYAL AVENUE (720 WEST SAN CARLOS STREET)

FILE NO. CP15-050 & ABC15-015

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on August 31, 2015, two applications (File Nos. CP15-050 & ABC15-015) were filed with the City of San José for a Conditional Use Permit and a Determination of Public Convenience and Necessity to allow the off-sale of alcohol of a full range of alcoholic beverages at a 31,352-square foot full-service grocery store (Smart & Final) on a 2.78-gross acre site, on that certain real property situated in the CIC Combined Industrial/Commercial Zoning District and located on the southwest corner of West San Carlos Street and Royal Avenue (720 West San Carlos Street, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on January 27, 2016, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the City's Planning Commission and City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development/site plan for the subject property entitled, "Midtown Center 720 West San Carlos Street, San José, CA," dated July 31, 2015, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council;

WHEREAS, this City Council has heard and considered the testimony presented to it at

the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the southwest corner of West San Carlos Street and Royal Avenue, at 720 West San Carlos Street. The project is located in an existing 31,352-square foot building. There are commercial, industrial, and residential uses to the north, south, and east. Railroad tracks, Los Gatos Creek Trail, and residences are to the west. The closest residential unit is approximately 285 feet from the proposed use.
2. **Project Description.** This is a Conditional Use Permit and a Determination of Public Convenience or Necessity to allow the off-sale of alcohol of a full range of alcoholic beverages at a 31,352-square foot full service grocery store (Smart & Final) on a 2.78 gross acre site in the CIC Combined Industrial/Commercial Zoning District. The off-sale of alcohol would consist of an approximately 350 square foot portion of the store (approximately 1.1% of the total gross floor area).
3. **General Plan Conformance.** The project is consistent with the Envision San José 2040 General Plan designation of Combined Industrial/Commercial. This category allows a significant amount of flexibility for the development of a varied mixture of compatible commercial and industrial uses, including hospitals and private community gathering facilities. Properties with this designation are intended for commercial, office, or industrial developments or a compatible mix of these uses.

Consistent with Vibrant Neighborhoods Policy VN-3.1, the proposed grocery store with alcohol sales will provide a full service grocery store to a generally underserved neighborhood. The closest existing grocery store in the area is approximately one-half mile away. The goal of Policy VN-3.1 is that all San José residents be able to live within a one-half mile walking distance of a full service grocery store. Therefore, the existing grocery store does not serve the community directly adjacent to the subject site in terms of walking distance.
4. **Zoning Ordinance Compliance.** This Project complies with all applicable provisions of the Zoning Ordinance for building height, setbacks, and parking, in that the proposed project is located in the CIC Combined Industrial/Commercial Zoning District. However, the zoning district requires a Conditional Use Permit for the off-sale of alcoholic beverages.

5. **Environmental Review.** Under the provisions of Section 15301 (Existing Facilities) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Director of Planning found this project to be exempt from the environmental review requirements of CEQA and Title 21 of the San José Municipal Code, as amended, as the proposed off-sale of alcohol, is located in an existing structure. The proposed use will occur inside of the grocery store and does not require expansion of the building.

Based on the above-stated facts and analysis, and subject to any conditions set forth below, the City Council concludes and finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare.

Analysis: As indicated in a Police Department Memorandum dated September 2, 2015, , the proposed use is not located within an area of high crime, but the area does exceed the ratio of off-sale retail licenses to population in the county. However, the Police Department is neutral to the issuance of the Conditional Use Permit. In addition, the alcohol sales will within a full service grocery store that also provides fresh produce, dairy, and meat..

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area.

Analysis: The proposed project will occupy an existing building, and will be only making minor exterior façade modifications and internal tenant improvements to facilitate the proposed use through a separate Site Development Permit (File No. H15-049). Other than the front façade and future signage, the existing structure will not expand beyond the current state of the building. The off-sale of alcohol would occur within an approximately 350 square foot portion inside of the store (approximately 1.1% of the total gross floor area of the store).

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and

- b. By other public or private service facilities as are required.

Analysis: The subject site is adequately served by the adjacent public streets and can be directly accessed from West San Carlos Street and Royal Avenue. Bus routes are located on West San Carlos.

Further, the City Council concludes and finds, based on the analysis of the above facts in regards to the Zoning Ordinance findings for off-sale of alcohol that:

1. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location.

Analysis: There is one other use involving the off-sale of alcoholic beverages within a 500 foot radius of the proposed site. There are no other uses within a 1,000 foot radius of the site, and this site will only be the second off-sale of alcoholic beverages location within 1,000 feet. Therefore, this finding **can** be made.

2. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000 foot radius from the proposed location, that the resulting excess concentration of such uses will not:

- a. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the area; or
- c. Be detrimental to public health, safety or general welfare.

Analysis: As stated above, the proposed use will not result in more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000 foot radius of the proposed location. Therefore, this finding is **not applicable**.

- d. For such a use at a location closer than 500 feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than 150 feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

Analysis: The proposed site is not located closer than 500 feet from any child care center, social service agency, residential care facility, residential service facility, elementary school, secondary school, or college or university. The project site is not within 150 feet from any residentially zoned property. Therefore, this finding **can** be made.

Finally, the City Council concludes and finds, based on the analysis of the above facts in regards to the Municipal Code findings for a Determination of Public Convenience or Necessity that:

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.

Analysis: The proposed use is within the Burbank/Del Monte Strong Neighborhoods Initiative (SNI) area. However, the Police Department is neutral to the issuance of the Conditional Use Permit, as the reported crime statistics are not over the 20 percent crime index. In addition, the proposal would provide a full-service grocery store to an underserved area where there is no other grocery store within a half mile. Therefore, this finding **cannot** be made.

2. The proposed use would not lead to the grouping of more than four off-sale uses within a 1,000-foot radius from the proposed use.

Analysis: There is only one other off-sale uses within a 1,000 foot radius of the site, and this site will only be the second off-sale of alcoholic beverages location within 1,000 feet. Therefore, this finding **can** be made.

3. The proposed use would not be located within 500 feet of a day care center, public park, social services agency, or residential care or service facility, but would be located within 500 feet of a school and within 150 feet of a residence.

Analysis: The proposed use is not located within 500 feet of a school, day care center, social services agency, or residential care or service facility. The site is also not within 150 feet of a residence. Therefore, this finding **can** be made.

4. Alcohol sales would not represent a majority of the proposed use.

Analysis: Approximately 1.1% percent of the total floor area is proposed to be used for the sale of alcohol for off-site consumption. Accordingly, the off-sale use represents an ancillary and incidental component to the primary grocery store use and does not represent a majority of the overall use. Therefore, this finding **can** be made.

5. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety.

Analysis: The full-service grocery store with incidental off-sale of alcohol will further the development of this area as a vibrant, walkable, mixed-use neighborhood that enhances and supports the vitality of the existing area without significantly impacting the public health or safety. Therefore, this finding **can** be made.

Given the above-stated analysis, the first finding for the PCN cannot be made by the City Council for the proposed off-sale of alcohol because the site is within a SNI. As such, the City Council may issue a determination in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages where it can make a determination that not all of the required findings set forth above can be made, and when the Council identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use. The Council can identify and find that significant and overriding public benefit will be provided by the proposed use in that the alcohol will be provided at a full-service grocery store in an underserved area, providing convenience to the community.

In accordance with the findings set forth above, a Conditional Use Permit and Determination of Public Convenience or Necessity for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The City Council expressly declares that it would not have made this Determination and granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire (2) two years

from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.

3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, "Midtown Center 720 West San Carlos Street, San José, C," dated July 31, 2015, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City approval, and to the San José Building Code (San José Municipal Code, Title 24). The approved plans are referred to in this Permit as the "approved plans" or "Approved Plan Set".
5. **Certificate of Occupancy.** The permittee shall obtain a Certificate of Occupancy. Procurement of a Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Conditional Use Permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
6. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
7. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures,

conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.

8. **Use Authorization.** This Conditional Use Permit authorizes the off-sale of a full range of alcoholic beverages in association with a full-service grocery store.
9. **Alcohol Service and Sale.** Alcohol service and sale shall be conducted in full compliance with the issued ABC license.
10. **Limitations on Area of Alcohol Sales.** The sale of alcohol for off-site consumption allowed by this Conditional Use Permit shall be limited and incidental to the primary use of a full-service grocery store. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 3 percent of the total floor area of the entire building.
11. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
12. **Anti-Graffiti.** The operator shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
13. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
14. **Outdoor Uses.** There shall be no outdoor uses approved through issuance of this Permit.
15. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
16. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

ADOPTED and issued this ____ day of _____ 2016, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
MAYOR

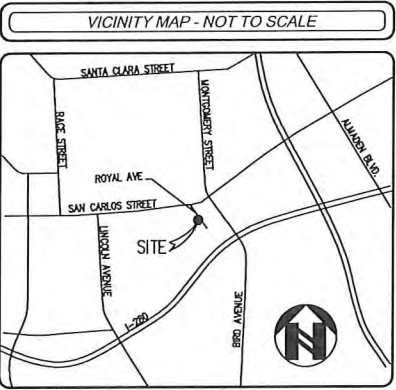
ATTEST:

TONI J. TABER, CMC
CITY CLERK

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

MIDTOWN CENTER
720 WEST SAN CARLOS STREET,
SAN JOSE, CA
SANTA CLARA COUNTY



PROJECT CONTACTS

DEVELOPER

CHASE JIANNALONE
OPPIDAN
6450 VIA DEL ORO
SAN JOSE, CA 95119
(925) 980-4612

APPLICANT

AL SHAGHASHI
ams associates, Inc.
801 YGNACIO VALLEY ROAD, SUITE 220
WALNUT CREEK, CA 94596
(925) 943-2777 FAX (925) 943-2778

CIVIL ENGINEER

AL SHAGHASHI
ams associates, Inc.
801 YGNACIO VALLEY ROAD, SUITE 220
WALNUT CREEK, CA 94596
(925) 943-2777 FAX (925) 943-2778

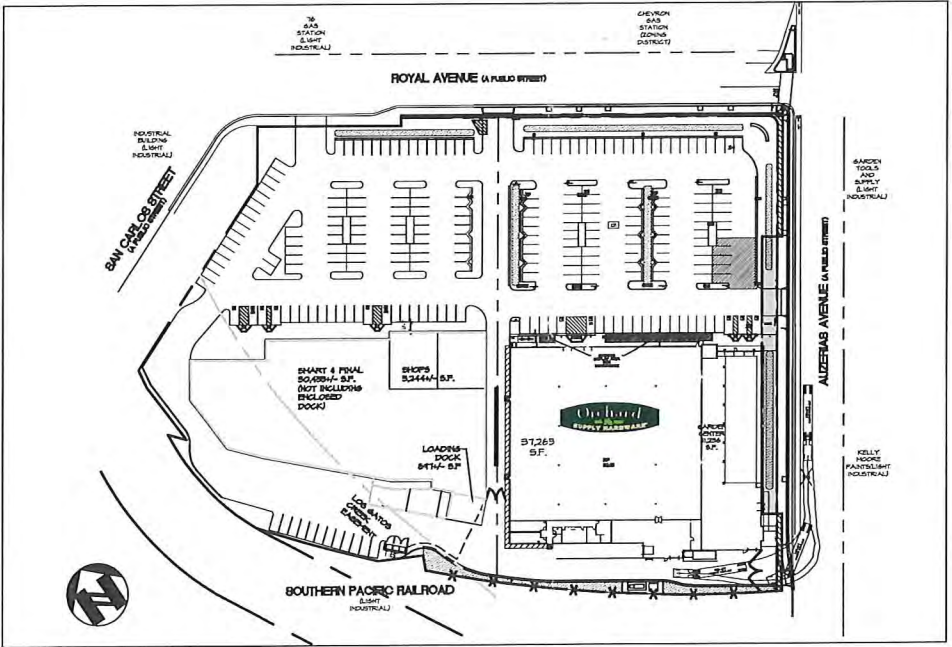
ARCHITECT

MCG
PAGE WINKLER
111 PACIFICA SUITE 280
IRVINE, CA 92618
(949) 533-1117 FAX (949) 474-7056

LANDSCAPE ARCHITECT

LEE EDER
GATES & ASSOCIATES
2671 CROW CANYON ROAD
SAN RAMON, CA 94583
(925) 736-8176 FAX (925) 838-8901

SITE KEY MAP N.T.S



PROJECT DATA

APN 264-15-015,028,031

ZONING CLASSIFICATION: (CIC) COMBINED INDUSTRIAL/COMMERCIAL
FLOOD ZONE CLASSIFICATION: ZONE D

BUILDING SUMMARY

SMART AND FINAL 31,352+/- S.F.
SHOPS 5,244+/- S.F.

TOTAL: 36,596+/- S.F.

PARKING SUMMARY

EXISTING PARKING 122
PROPOSED PARKING 123
PARKING RATIO 3.4/1000 S.F.

PARCEL SUMMARY

AUTOZONE PARCEL 2.785+/- A.C.

BENCH MARK

"K" IN OAKLAND CAST IN HOOD OF CATCH BASIN AT HANNAH STREET,
SOUTH SIDE OF AUZERAS STREET.

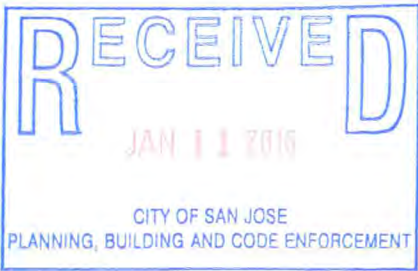
ELEVATION = 100.88 FEET (FLOOD HAZARD DATUM)

TEMPORARY BENCH MARK:
RIM OF SEWER MANHOLE AT THE INTERSECTION OF AUZERAS STREET AND
DRAKE STREET, AS SHOWN ON AS-BUILD PLANS FOR CITY OF SAN JOSE,
DOC. #3-4432.

ELEVATION = 98.67 FEET

SHEET INDEX

C-0 COVER SHEET
1 CUP SITE PLAN
FFP FIXTURE FLOOR PLAN



SMART & FINAL - 720 WEST SAN CARLOS STREET, SAN JOSE, CA
AMS PROJECT NO. 15-2258

PROJECT DESCRIPTION

THIS PROJECT IS LOCATED AT 720 WEST SAN CARLOS STREET IN
SAN JOSE, SANTA CLARA COUNTY IN THE STATE OF CALIFORNIA.
THE EXISTING SITE CONSISTS OF 2.785 ACRES AND IS BOUNDED BY
WEST SAN CARLOS STREET TO THE NORTH, ROYAL AVENUE TO THE
EAST, AN ORCHARD SUPPLY HARDWARE STORE WITH PARKING LOT
TO THE SOUTH, AND A CREEK & RAILROAD TRACKS TO THE EAST.

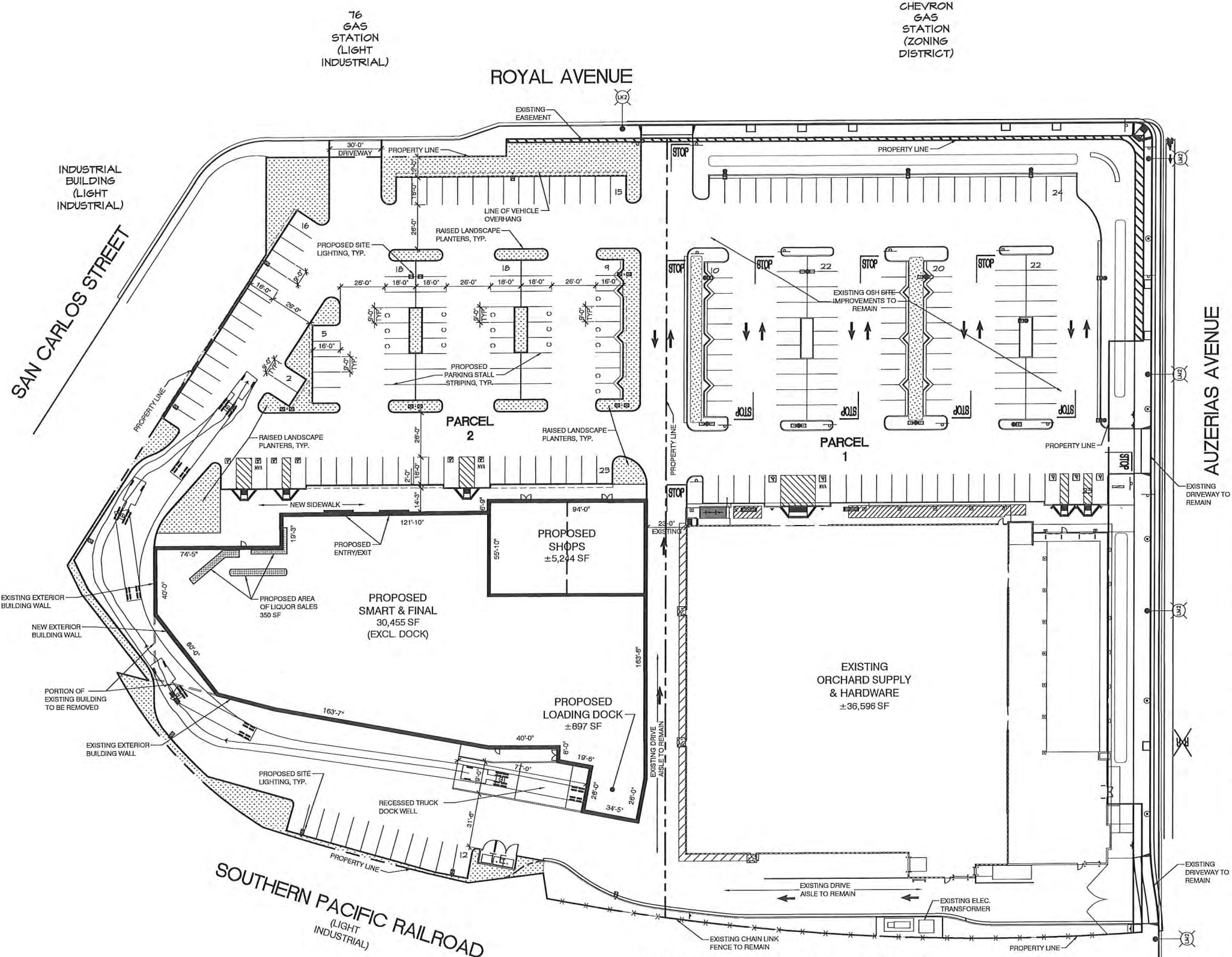
THE EXISTING 36,216 SF BUILDING ON THE SITE WAS PREVIOUSLY
USED BY ORCHARD SUPPLY HARDWARE. THIS BUILDING WILL
REMAIN AND MINOR MODIFICATIONS WILL BE MADE TO
ACCOMMODATE SMART & FINAL.
31,352 SF OF THIS BUILDING WILL BE OCCUPIED BY SMART & FINAL
AND THE REMAINING 5,244 SF IS TO BE LEASED AS RETAIL SHOPS.
AS PART OF THIS APPLICATION WE ARE REQUESTING APPROVAL
CONDITIONAL USE PERMIT FOR SMART & FINAL FOR SALE OF
ALCOHOL.

ams
801 YGNACIO VALLEY ROAD
SUITE 220
WALNUT CREEK, CA 94596
925-943-2777 FAX 925-943-2778
associates, inc. PLANNING ENGINEERING SURVEYING

COVER SHEET
MIDTOWN CENTER
720 WEST SAN CARLOS STREET
SANTA CLARA COUNTY CALIFORNIA
SAN JOSE

SHEET C-0
OF PROJECT
15-2258

CP15-050 & ABC15-015



SITE SUMMARY

OVERALL SITE

LAND	246,469 SF	5.65 ACRES
BUILDING		73,859 SF
LAND / BLDG RATIO:		2.34 / 1
COVERAGE:		30%

PARCEL 1 - NO CHANGE

LAND	125,140 SF	2.87 ACRES
BUILDING		37,263 SF
LAND / BLDG RATIO:		2.36 / 1
COVERAGE:		30%

PARKING SUMMARY:

PARKING SPACES REQUIRED:

USER	CITY RATIO REQUIRED	REQUIRED
ORCHARD	4 SP/1000 SF	149

PARKING SPACES PROVIDED: 121

PARCEL 2

LAND	121,329 SF	2.78 ACRES
BUILDING		36,596 SF
LAND / BLDG RATIO:		2.32 / 1
COVERAGE:		30%

PARKING SUMMARY:

PARKING SPACES REQUIRED:

USER	CITY RATIO REQUIRED	REQUIRED
SMART & FINAL	4 SP/1000 SF	126
RETAIL SHOP	4 SP/1000 SF	21

PARKING SPACES PROVIDED: 147

PARKING SPACES PROVIDED: 118

LEGEND

---	PROPERTY LINE
[Pattern]	PROPOSED LANDSCAPE
[Pattern]	PROPOSED LIQUOR SALES (WITHIN BUILDING BOUNDARY)

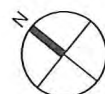
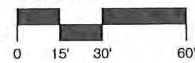
MIDTOWN CENTER 720 WEST SAN CARLOS STREET SAN JOSE, CALIFORNIA

OPIDIAN INVESTMENT COMPANY

6450 VIA DEL ORO
SAN JOSE, CALIFORNIA 95119

CUP SITE PLAN EXHIBIT SHEET 1

Scale : 1" = 30'



DATE: 07/31/15
MCG JOB #: 15.281.01

© MCG ARCHITECTS 2012. ALL RIGHTS RESERVED.
NOTE: This information is conceptual in nature and is subject to adjustments pending further verification and Client, Tenant, and Governmental Agency approvals. No warranties or guarantees of any kind are given or implied by the Architect.

111 Pacifica, Suite 280
Irvine, California 92618
① 949.553.1117 ② 949.474.7056
mcgarchitecture.com



FIXTURE FLOOR PLAN
EXTRA

720 WEST SAN CARLOS
SAN JOSE, CA
2015 NEW STORE

REVISION

REVISION

DATE

5-12-15

SCALE

3/32"=1'

STORE #XXX

DRAWING NO.

FFP

xxxFFP (SAN JOSE)

PROJECT DATA		EXTRA MIN.	
GROSS BLDG	26,876 S.F.		
SALES AREA (76%)	20,347 S.F.	23,000 S.F.	
STORAGE AREA	1,639 S.F.	1,600 S.F.	
COOLER / FREEZER	2,408 S.F.	2,310 S.F.	
MISC AREA	2,282 S.F.	1,000 S.F.	
CONDOLA	1,334 L.F.	1,441 L.F.	
PALLETS PALM (3)	20 L.F.	40 L.F.	
LIQUOR / WINE	63 L.F.	69 L.F.	
TOTAL	1,417 L.F.	1,550 L.F.	
PROMO PALLETS	0	10	
FROZEN FOOD FREEZER	470 S.F.	400 S.F.	
FROZEN FOOD (WALK-IN BOXES & CASES = DR COUNT)	0	0	
FROZEN WALK-IN BOX	0	0	
CASES	0	0	
REACH-IN CASES	25	25	
TOTAL	25	25	
PROMO FROZEN FOOD	6	4	
PRODUCE FREEZ ROOM	313 S.F.	275 S.F.	
PRODUCE COOLER	420 S.F.	400 S.F.	
PRODUCE	44 L.F.	40 L.F.	
PRODUCE WALK-IN CASES	35 L.F.	24 L.F.	
ORGANIC PRODUCE W/D	12 L.F.	12 L.F.	
TOTAL L.F.	91 L.F.	64 L.F.	
PRODUCE DRY TABLES	18'x4' (3)	0 L.F.	
31'x4' (2)	62 L.F.	63 L.F.	
TOTAL L.F.	62 L.F.	63 L.F.	
MEAT W/UP ROOM	287 S.F.	250 S.F.	
MEAT COOLER	350 S.F.	275 S.F.	
FRESH MEAT	40 L.F.	48 L.F.	
FRESH MEAT W/D	0 L.F.	0 L.F.	
FRESH MEAT ISLAND	40 L.F.	48 L.F.	
TOTAL L.F.	40 L.F.	48 L.F.	
DAIRY/DELI COOLER	769 S.F.	748 S.F.	
DAIRY (WALK-IN BOXES = DR COUNT)	10	10	
DELI (WALK-IN BOXES = DR COUNT)	2	5	
DELI W/D (124 L.F.)	31	27	
DELI COUNTERS	0	0	
EGG CASE	2	2	
TOTAL DAIRY/DELI DRS	45	45	
CHEESE ISLAND	0 L.F.	12 L.F.	
PROMO DELI	6 L.F.	8 L.F.	
REFRIGERATED BEER/WINE	32 L.F.	40 L.F.	

EXISTING ORCHARD
SUPPLY &
HARDWARE

